21/3

Previous references.
Prio 20-09-1906.

Cs File No. 26-06

1906-07

(Courts.)

Serial Nos. 1-7

Later references.
Cs nubro'
Cs "5b-11 5-9.
Cs 5-6-11
Cs 7-14(1-8).

GENERAL AND REVENUE SECRETARIAT.

Serial Nos. 1-7

Part B. for February 1907.

SUBJECT.

The extent to which Magistrates in a District are subordinate to the District magistrate.

Contents

From the Registrar of the Chief Court of Mysore.
No 544/35 dt 23-7-06.

Forwards correspondence regarding the refusal of Mr. K Chanz to comply with the requisition of the District magistrate of Shimoga and states that the Govt are competent to deal with the question raised therein as to how far a subordinate magistrate in a Distric

G. R. S. 58

is bound to obey the orders of the Distt magistrate when not issued under the provisions of any law or rule.

2 To the Registrar Chief Court No 91302 dt 15-11-06.

Observing that Mr. K. Chandy would have done better to have acknowledged the mistake when pointed out to him and taken steps to rectify it instead of resenting the action taken by the District magistrate.

3 To the Registrar of the Chief Court of Mysore No 1504 dt 7-12-1906.

Calls for the opinion of the Chief Court on the general question raised in F.O No. 91302 — cts 26-06 — 2 dt 15-11-06 and para 8 of his letter No 5744-35 dt 23-7-06, viz whether a subordinate magistrate is bound to obey the orders of the District magistrate when not issued under the provisions of any law or rule.

4 From the same officer, No 3319/179 dt 17-12-06

States that the Judges are of opinion that under Sec 17(1) of the CP-C all magistrates in a district are subordinate to the District magistrate and are therefore bound to obey him in all matters connected.

7/12

G. R. S. 11] 1906.

GENERAL AND REVENUE SECRETARIAT

(III Courts.)

NOTES.

File. No 26-06.

FILE HEADING.

The extent to which Magistrates in the District are subordinate to the District Magistrate.

From

The Registrar of the Chief Court of Mysore.

No. 544/35 Dated 23.7.06 Received 26.7.06.

Diary No. 7256	Enclos. one file Spare Copies.	Serial No. 1

BRIEF ABSTRACT OF LETTER.

Forwards correspondence regarding the refusal of Mr K. Chandy to comply with the requisition of the District Magistrate of Shimoga and states that Govt are competent to deal with the question raised therein as to how far a Subordinate Magistrate is bound to obey the orders of the District Magistrate when not issued under the provisions of any law or rule.

NOTES AND ORDERS.

Subd for orders (with a copy of Prinsep's Criminal Procedure Code)

SR
30/7/06
30.7.06

The question is whether a Subordinate Magistrate

NOTES—First sheet.

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Serial No.

is bound to obey such orders of the District Magistrate as are not vested under the provisions of any law or rule the Chief Court is of opinion that the subordination of Magistrates contemplated in Sec 17(2) of the Criminal Procedure Code & Sec 6 of the Chief Court Regn. is only in respect of matters purely judicial on the present question the Chief Court proposes to send its opinion if required. The opinion of the Judges may be called for

Sec
30.7.06

Submitted with a draft letter.

SN
31/7/06.

Sec'y

Sec
31.7.06

Put up to 1st Oct. for submission before me

741
6.8.06

1/2
3.8.06

6
3.8.06

4) I don't know that such a big question should be raised and public time devoted to its consideration on a trumpery case like this. On the merits the Jud. Magistrate deserves to be punished & the Appellate Master rebuked for allowing such a glaring mistake to occur in his

Sec

Note—Contn. sheet

GPB—50,000—23 10-05

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his Consort - Far from resenting the Dirk Masters action in this matter I should if I were in Mr Chandys position have thanked the man in the street for pointing out the error - Please submit to the Revenue Secretary

18 Aug 06

5 Please submit a note as now on the question of fees - (Clerks in Collectorates) - 19/8/06

The facts of the case are fully stated in the letter from the Supt. Bruffy,

under disposal.

The accused Mima was sentenced on 4.12.05, to 4 months imprisonment and a fine of 10Rs, and further imprisonment for one month in default. The fine was paid in the beginning of March. So the period of imprisonment expired on 3.4.06, but intimation regarding the recovery of the fine was not sent to the Supt. of the Central Jail till about 100 days after. The Magte. with his letter states that there has been no illegal imprisonment because the accused had been directed under Sec. 106 of the Cr. Pr. Code to furnish

Note—Contn. sheet

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Security ~~for good behaviour~~ to keep the peace for one year and had failed to do so- The order committing the accused to prison for default of furnishing security is dated 18.4.06, so that between ~~the~~ 3.4.06 & 18.4.06 the prisoner was in jail without ~~any~~ the order of a Magistrate or Judge. The order dated 18.4.06 states that the imprisonment for default of furnishing security is to be from the date of the expiry of the substantive sentence i.e. from 15 days prior to the date of the order. And under the order 18.4.06 the imprisonment awarded ~~is~~ ~~is~~ is simple, while that actually suffered under that order was communicated as rigorous.

Sd/ 20.8.06

Please draft an order stating the facts briefly, omitting the above and commenting on Mr Chandy's action from the point of view of the Councillor's note.

21-8-06

Draft ~~of~~ order as above is put up. I would however submit that

Note—Contn. sheet

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the matter is one in which a censuring the magte for the mistake of his head would not be justifiable. His doubtful whether in any case a Magistrate could be censured by the Executive Govt for any error in his capacity as Magte & the Cr. Pr. Code gives no such power, while it does give power to remove or suspend a Magistrate from his office and to withdraw his powers. These latter powers Govt would of course be exercised only in very serious cases. It is a common place that in his judicial acts a Magistrate represents the King & the fact that & in his capacity as an Ex. officer he is subordinate the Executive Govt does not, & would submit, give the latter any direct control over the Magte, or give it a right to rebuke or censure him.

Whatever may be the views decisions about the above point, in this present case, a rebuke to the Magte would be inappropriate. For the Rule of Practice now quoted by the Chief Court, expressly directs that it is the duty of the Head Clerk

7/8/A

NOTE.—Contn. sheet

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Serial No.

* ie. through the presiding officer of the Court — The Head Clerk brings it to the notice of the Magistrate who issues instructions to the Bailiff

of the Court to give with reasonable* the Jail authorities of the recovery of any fine and it is also laid down that if the Head Clerk fails to do this he would be liable to dismissal. Nothing is said about the responsibility of the presiding officer, i.e. the Magistrate. ~~It~~ ~~was not~~ ~~expected~~ supposed to be responsible for errors committed by his ministerial officers & he cannot be said to have "allowed" such a mistake to occur. This only ~~If~~ such errors were frequent in his Court, and he had not taken steps to punish the clerks concerned, or the Head Clerk had not intimated the recovery of the fine, he could be said to have allowed that the mistake occur.

II The question which the Head Clerk of Court has submitted for orders is not the responsibility of the Magistrate for this error, but it is the question of the subordination of the Magistrate to the District Magistrate. If it is not proposed to deal with this question,

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it is submitted that the Chief Court & the Dt. Magte. may be left to take notable notice of the Clerk's reference

Sec'y) 13-9-06

1. Please put up a Note explaining the draft which I have prepared. I should like to have a talk with the Under Secy. on the subject — 15-9-06

Partly typed draft in 17-9-06

2. Typed draft is submd. to Secy. I shall speak SW 20/9/06 about this when I come to Mysore 22/9

1. The point that the Chief Court have definitely referred to Govt. for decision is the question of the subordination of the Hospitals to the District Magistrate in matters not falling under statutory provision. ~~The Secy. says~~ Though the facts which have given rise to the question are unimportant, the question itself is not so. The Chief Court

NOTE—Contn. sheet

GPB—50,000—23-10-05

Serial No.

have opened to give their opinion on it if wanted to do so. Would it not be well to have it decided, now that it has been raised in this pointed way? In deference, however, to the views expressed by the Councillor, a draft order assuming the facts, and declining to decide the question of principle, is submitted for further orders.

Dewan 16-(x)

11/52 30-9-06

16 The draft as slightly altered may be approved. [On further consideration it seems true that the Clerk cannot be ordered to be punished without our calling for his explanation. This further action is in my opinion rendered necessary or even precluded by the attitude assumed by the Subordinate Magistrate.]

30/9/06

30/9/06

2690 2/11/06

31/10

17 The Dewan approves of the draft as revised being issued. He desires that the explanation of the Clerk concerned should be called for and that the opinion of the Ch. Ct. judges in

Note—Contn. sheet

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on the general question raised in the case.

B.O
C.B
9/11/06

18 1) Issue: a letter 2) address the Regr. the Chief Court by a letter requesting that the full matter be referred with the views of the Chief Court on the general question

10/11/06

10/11

2. To the Registrar, Chief Court. No. J 1302/8 15-11-06 observing that Mr K. Chandy would have done better to have acknowledged the mistake when pointed out to him & taken steps to rectify it instead of presenting the action taken by the Dy Magte, Shimoga.

Submd with a draft to the Regr. Chief Court. Calling for the opinion of the Chief Court on the general question referred to above

Dr SP
26-11-06 27/11/06.

Draft submitted for approval

Dr
28/11/06

27/11/06

Dr. 1/12/06

Note—Contn. sheet

GPB—50,000—23-10-05

G.R.S. 12J

General and Revenue Secretariat.

Cts File No. 26 of 1906

Serial No.	
	3 To the Registrar, Chief Court. No J 1504 & 7.12.06 Calls for the opinion of the Chief Court on the general question raised in G.O. No J 1302/Cts 26-06-2 & 15.11.06 & para 8 of his letter No 544/35 & 23.7.06. viz Whether a Subordinate Magistrate is bound to obey the orders of the Dt. Magistrate when not issued under the provisions of any law or rule.
Sws. J 1493	4 From the Registrar, Chief Court. No 3319/172 & 17-12-06. States that the Judges are of opinion that under sec 17(1) of the C.P.C all Magistrates in a district are subordinate to the Dt. Magistrate & are therefore bound to obey him in all matters connected with their work as Magistrates & to carry out all orders & instructions issued by him with respect to such work and adds that the Chief Judge has never up to this heard this question.
Sws. 7/1/07	2 Submitted. The explanation of the Head Clerk of the 1st Class Magistrate's Court, Shimoga has not been received as called for in Sl No 2 above (G.O No J 1302 & 15.11.06 para 3.) A draft to the Registrar, Chief Court, is herewith submitted. K.N. 22.12.06. Approved. 22/12/06

NOTE—Contn. sheet

GPB—50,000—23-10-05

Serial No. 5

To the Registrar, Chief Court. No J. 1829 & 29.12.06

Requests that the explanation of the Clerk of the Asstt Comr & 1st class Magte's Ct at Simla to whose negligence the mistake was primarily due as called for in para 3 of his J 1302 & 15.11.06 may be obtained & forwarded.

Secy

6) From the Registrar & the Chief Court of Mysore

no 3847/202 & 16/1/07

forwarding the explanation & the clerk Sahayya as called for in the above and stating that in the opinion of the Chief Court the explanation offered is most unsatisfactory

Submitted for orders. Orders are required vide SN 21/1/07 on 2 points:—

23 1) Punishment of the clerk who failed to report at once ~~the~~ ~~see~~ the Govt Authorities the recovery of fine from the accused Bheema.

2) Subordination of ~~Distt~~ Mun Magistrate in the district to the Dt. Magistrate.

SN 21/1/07 2— With regard to the general question, namely, whether a Subordinate Magistrate is bound to obey the orders of the District Magte when

NOTE—Contn. sheet

Serial No.

not issued under the provision of any law or rule, the Judges of the Chief Court are of opinion that, under Sec. 17(1) of the Cr. P. Code, all magistrates in a District are subordinate to the District Magte and as such they are bound to carry out orders & instructions issued by the District Magte except where it shall appear that such order or instruction is illegal or improper.

In the explanation submitted by the clerk of the Shimoga Dy. Asst. Commr's office, it is stated that owing to extra work he had to get through in addition to his own, the report received on 17/5/ from the Police intimating the recovery of the fine from the accused was lost sight of, but all the same it is a serious mistake not to have taken the trouble to see what the contents of the report were for nearly a month. The clerk Veeranna admits that he forgot to see the contents of the report

MGCPB—50,000— 24-7-05

Serial No.

till the 12th April 1908.

Seen
HS
22/11/07

26 Read the order of 15th Nov 1906 in abstract. the Chief Court's Registrar's letter of 17th Dec 1906 in reply, & his letter of 16th Jan 1907 in abstract, and pass an order in the following terms:-

27 "The Govt. concur in the opinion expressed by the Chief Court that all Magistrates subordinate to the Magistrate of the district are bound to obey his lawful orders (in full), "and direct that that opinion be communicated to all Magts for information and guidance.

28 "The explanation of the clerk for the omission to bring to the notice of the Magistrate the fact of the payment of the fine and the hardship caused thereby to the prisoner - the jail authorities is quite unacceptable, & the Govt direct that he be fined a month's pay."

Submit draft of the desired letter to the Legal Councillor.

E 3/1/07

HS
2/11/07

Submitted with a draft

HS
25/1/07

Note—Contn. sheet

AIGO(2)B—50,000—24-7-05

G.R.S. 12]

General and Revenue Secretariat.

No. File No. 26 of 1906

Serial No.	
	Draft- Sent to the Dewan through the 1st. Councillor.
	1970 / 29.10.07 / 30/10/07 The Draft may be approved. W. 27/11/07
	W. 12/11/07
	3746 / 15.2.07 Draft approved — Done W. 22/2/07
3 Recd. 5/3/07	
7	To the Registrar of the Chief Court " the Dt Magistrate of Shimoga Dt " other Dt Magistrates " the Comptroller. No J 2603-12 J 28/2/07 Communicates the opinion of the Chief Court expressed in S(4) to all the District Magistrates for information and guidance of all Subordinate Magistrates in the State; observes that the explanation of Clerk Sghayya is unsatisfactory and fines him one month's pay.
	Seen W. 2/3/07

NOTE—Contn. sheet

GPB—50,000—23-10-05

N 5146 Jn. 1, one Enclosure file 35 and Records

1 J 256

Bangalore, dated 23rd July 1906.

From

V.A.Rajaratna Mudaliar, Esquire,
Registrar, Chief Court of Mysore.

To

K.S.Chandrasakara Iyar Esquire,
Secretary to Government,
General and Revenue Departments.

Sir,

I am directed to state that on the 4th December 1905 one Volagada Bhima the 1st accused in Criminal Case No.15 of 1905-06 on the file of the Assistant Commissioner and 1st Class Magistrate, Shimoga was sentenced to six months' imprisonment and a fine of Rs:10/-. In appeal the Sessions Judge confirmed the order of fine but reduced the term of imprisonment to 4 months.

2. The District Magistrate, Shimoga District, received a petition on the 12th April 1906 from the father of the said prisoner complaining that his son was not released from the Jail though the term of imprisonment had expired and the amount of fine had been paid up. The District Magistrate sent this petition to the Magistrate concerned and called for a report in the matter, with reference to the delay which occurred in the Office of the Assistant Commissioner Magistrate in intimating to the Jail Authorities the fact of recovery of the fine.

3. The Magistrate not having replied a reminder was sent by the District Magistrate about 20 days after and then Mr.Chandy questioned the authority of the District Magistrate to call for a report.

4. The District Magistrate pointed out that, under section 17 of the Criminal Procedure Code all the Magistrates in the District were subordinate to him for administrative purposes.

5. Another reminder was sent by the District Magistrate and the records also were called for. The Magistrate -

[redacted] replied

forwarded the records but persisted in with-holding the report called for by the District Magistrate.He added that he ~~will~~ would be glad to submit any explanation that the Chief Court may call on him to furnish.

6. The District Magistrate thereupon submitted to this Court the whole correspondence together with the records of the case, stating that if the Magistrates subordinate to the District Magistrate thus refused to comply with the requisition sent by the latter, it would be impossible for him to exercise any control over them.

7. Mr.Chandy was then called on in this Court Proceedings No.8309/3733 dated 21st Ultimo to submit his explanation on two points Viz:- (1) why the recovery of fine from the accused was not intimated immediately to the Jail Authorities as required by Rule of Practice No.12 dated 8th May 1879 and (2) why the District Magistrate's requisition for information in regard to the delay complained of was not complied with.

8. The explanation received is forwarded for such action as Government may consider proper.The majority of the Chief Court Judges consider that Section 17 (2) of the Criminal Procedure Code providing for the general control of the District Magistrate over other Magistartes and Section 10 of the Chief Court Regulation - 1884 providing for the superintendence and control by the Chief Court if Courts Criminal and Civil must be taken as referring to matters purely judicial.The question whether a subordinate Magistrate is bound to obey the order of the District Magistrate when not issued under the provisions of any law or rule is a question of executive administration.It is doubtful whether the Chief Court are empowered to deal with it.It is certain that the Executive Government can and more convenient that they should deal with it.The Judges are ofcourse willing to give their opinion if required.

9. The original Vernacular correspondence beginning with the District Magistrate's Yadi No.1247 dated 12th April 1906 and ending

ending with the Assistant Commissioner Magistrate's docket No. 770 dated 30th June 1906 together with the records of the case in question are also forwarded for reference.

I have the honor to be,

Sir,

Your most obedient servant,

REGISTRAR.

Memo.

With reference to the Proceedings of the Chief Court No. 8309/3733 dated 21st June 1906 I beg to state as follows: —

(1) Intimation was not sent to the gaol on account of the inadvertence of my judicial munshi who did not bring to my notice the fact that fine had been recovered. He was generally competent and careful and I would request the omission to be excused or lightly punished seeing that fortunately for the Head munshi there has been no illegal imprisonment in this case.

how? Mark 6.7.06

In this connection I would further state that it used to be the practice of the gaol Superintendent to enquire a few days before the expiry of a substantive sentence of imprisonment whether the fine had been recovered. This practice has recently been revived, but for a long interval including the period in question such enquiry was not being made. Such requisitions if regularly made will materially help judicial munshis to see that every recovery of fine is intimated forthwith to the Superintendent.

(2) The second point involves, in my opinion

a large question of principle and before discussing it I would state the facts again. The order of the Chief Court was received just when I handed over charge of the Shimoga Division and I had to leave for Davangere the next day. As it will take time to get back the records for reference, the facts have to be stated from memory.

While I was holding Court the District Magistrate sent a peon to fetch my judicial munshi. As the requisition, though informal, was from a superior magistrate, I allowed the munshi to go. The District Magistrate who had received a petition from the prisoner's father found out from my judicial munshi that intimation about the receipt of the fine had not been sent to the Jail Superintendent. He told the munshi that an explanation would have to be submitted and sent him back. The munshi returned and reported the conversation to me. This was the first intimation that I had of the recovery of the fine, and I communicated the fact at once to the Jail Superintendent. As mentioned already, the prisoner had to undergo imprisonment for failing to execute a security bond, and was actually released only considerably later.

The next day the District Magistrate sent

me

me the petition that he had received from the prisoner's father and asked me to submit information that would substantiate or clear the allegations contained in the petition. The District Magistrate, as a matter of fact, was in possession of the necessary information from my Judicial Munshi. I informed the District Magistrate that the recovery of the fine had been intimated to the Jail Superintendent and that the prisoner was undergoing imprisonment for failing to furnish security. As the District Magistrate's requisition amounted to demanding an explanation from me for allegations contained in a third party's petition — allegations moreover which had already been enquired into by the District Magistrate before he sent the petition to me, — I further stated that I was not aware under what authority the District Magistrate was acting. To this he replied that all Magistrates were subordinate to the District Magistrate and again wanted me to submit the explanation. I did not reply to the reference. I thought it would be irregular on my part to point out the correct procedure to a Superior Magistrate but I did verbally express my view that the proper course for the District Magistrate to follow would be to call for the records in the case and pass proceedings, that a Magistrate was not expected

to submit an explanation except to the Chief Court or for submission to the Chief Court. I believe this view was communicated to the District Magistrate because finally he called for the records - and also stated for the first time that he had to make a reference to the Chief Court. I submitted the records at once, and informed the District Magistrate that they were always open to his inspection and would have been sent up any time previously on his requisition, and that I should be glad to submit any explanation that the Chief Court might call on me to submit.

The above recapitulation will indicate what I feel, and feel strongly in the matter. This was a case in which I was aware that my office had made a mistake and in which if I had acknowledged the mistake and reported the District Magistrate to excuse my judicial munshi, the matter would have been dropped because as a matter of fact the prisoner did not undergo illegal imprisonment. This might have been the prudent course to follow. But I felt that a principle was involved in the case for the maintenance of which a different course had to be adopted:—

In my view the Magistrates are subordinate only to the Chief Court in the matter of their conduct as Magistrates. Their subordination to the District Magistrate

Magistrate and to the Sessions Judge is rigorously confined by the provisions of the Code and the directions of the Chief Court. These provide that every act of a Magistrate should be the subject of an order and the substance of the order should find an entry in one of the Registers. They further provide that the District Magistrate is competent to call for all records and orders and to inspect all registers. If, then, the District Magistrate receives information that a subordinate Magistrate has made an illegal order, or, as in this case, omitted to make a legal order, the correct course for the District Magistrate to pursue is to call for the records and pass proceedings in the matter of the illegal order or omission. A copy of the Proceedings will go to the subordinate Magistrate and another copy to the Chief Court, and it is only if the Chief Court consider that the subordinate Magistrate has to submit an explanation, that the latter should be called upon to do so. He should not have to submit explanation for his conduct to the District Magistrate on the receipt of every petition from a third party.

The subordination of a First Class Ma[redacted]

or for that matter, a third class magistrate also — to the District Magistrate stands thus on an altogether different footing from the subordination of an Assistant Commissioner or Amildar to the Deputy Commissioner. The interests of justice require that the independence of subordinate magistrates should be anxiously and jealously guarded. In this case if I had submitted an explanation to the District Magistrate — <u>when he did not even say that he wanted it for submission to the Chief Court</u> — and he had decided, as I had reason to believe he would, — that no further action was necessary, I would both have allowed him to exercise an authority which I consider that he does not possess and put myself under a personal obligation to him. This would have materially damaged my judicial independence, and I thought that it would be necessary for me to adopt the course that I have actually taken.

Whether the Hon'ble Judges of the Chief Court decide that what I did was correct or otherwise, I beg that they will accept my assurance that I was led to follow this course, altogether in [illegible] what I considered to be the interests of judicial integrity and independence.

Dwarangere
30th June 1906

H. Kleander
Asst. Commr &
1st Cl. Magistrate.

Courts File No.26-
Serial No.2.

Proceedings of the Government of H.H.
the Maharaja of Mysore.

Read:

Letter No.544/35 dated the 23rd July 1906, from the Registrar of the Chief Court, reporting on the omission of Mr. K.Chandy, Assistant Commissioner and First Class Magistrate, Shimoga Division, to intimate to the Jail authorities in time the recovery of a fine imposed by him in a criminal case in which the accused was sentenced to imprisonment in default of payment of the fine.

Order thereon.No.J.1302/Leb 26-06-4
Dated Bangalore the 15th ~~September~~ November 1906.

The facts of the case are as follows:-

Volagada Bhima one of the accused in Criminal Case No.15 of 1905-06 on the file of Mr. Chandy's court was sentenced on the 4th December 1905 to six months' rigorous imprisonment and a fine of Rs.10, and in default of payment of the fine, to further rigorous imprisonment for one month; and was also directed under section 106 , Criminal Procedure Code to furnish security to keep the peace for one year. In appeal the fine and the direction to furnish security were confirmed but

the sentence of imprisonment was reduced to four months. In the beginning of March 1906, the father of the accused paid the amount of the fine to the Police Jamadar of Shikarpur, who intimated the recovery of the fine to the court, but the fact was not communicated by the court to the Jail authorities until after the 12th April 1906 (the substantive sentence of imprisonment had expired on the 3rd April 1906) when a petition on the subject was received by the District Magistrate from the prisoner's father. The District Magistrate then called upon Mr. Chandy to explain why the recovery of the fine had not been intimated to the Jail authorities in time, but Mr. Chandy declined to give any explanation except on the requisition of the Chief Court. Mr. Chandy was then called upon by the Chief Court for an explanation. The explanation submitted is that the mistake was due to an inadvertence on the part of the clerk, but that as a matter of fact the prisoner had not been illegally confined as he had been directed to furnish security to keep the peace for one year but had failed to do so.

2. An examination of the records, however, shows that although the accused was directed on the 4th December 1905 when sentence was passed on him, to furnish security, the order committing him to jail in default was passed only on the 18th April 1906, so that between the 3rd and the 18th April the prisoner was in

jail without a legal warrant. Further, the imprisonment awardable and actually awarded for failure to furnish security is only simple, while that actually undergone by the prisoner in consequence of intimation of recovery of the fine not being given was rigorous.

3. Government ~~are~~ regret that such a serious mistake should have been allowed to occur. The Rule of Practice on the subject (No.12 dated the 8th May 1879) requires that immediate intimation of the recovery of such fines should be given to the jail authorities. The clerk to whose negligence the mistake was primarily due should be suitably punished.

4. The Government do not think that Mr. Chandy was well advised in raising in an unimportant case like the present so large a question as that of the duty of a Subordinate Magistrate to obey the order of the District Magistrate, when not issued under the provisions of any law or rule. ~~nor do they propose to discuss it now.~~ He would ~~in their opinion~~ have done better to have acknowledged the mistake when pointed out to him, ~~by the District Magistrate~~, and taken steps to rectify it instead of resenting the action taken by the District Magistrate.

5. The general question of the duties of subordinate magistrates with reference to orders of the District Magistrate will be dealt with separately.

Secretary

To The Registrar of the Chief Court of Lower

G.R.S. 26]

ab

File No. 26-06
Serial No 3

Diary No. of letter replied to J 256

No. J 1504

General and Rev. Secretariat
( )
, *the* 190 .

To

The Registrar
Chief Court

Date of issue 7/12/06

Signed by Asst Mawbrchetty.

Sir,

With reference to para 8 of your letter No 544/35 dated the 23rd July 1906, I am directed to request that ~~you will be pleased to move~~ the Government may be favored with the opinion of the Judges on the ~~important~~ question raised therein - viz. whether a subordinate Magistrate is bound to obey the orders of the District Magistrate when not issued under the provisions of any

over.

5 of Jud Pro: No. 1302-8 15/11/06 and
C.S. 06-21

Despatched by post 6/12/06.
GR 8/12

SUBJECT.

Law or rule.

Heine & Co

17/11/06

Secretary

27/11/06

27/11/06.

List of enclosures,

Copied by

Examined by

MGCPB—20,000-19-12—04.

No. 3319/179 C-26-06, dtd

urgent J 1493

Chief Court of Mysore,
Bangalore dated 17th December 1906.

From,

The Registrar,
Chief Court of Mysore.

To,

K. S. Chendrasekhara Iyer, Esq.,
Secretary to Government,
General and Revenue Departments.

Sir,

With reference to your letter No.J.1504-Cts.26-06-3 dated 7th instant requesting the opinions of the Judges on the general question referred to therein, I am directed to say that the Judges are of opinion that section 17 (1) of the Criminal Procedure Code makes all Magistrates in a District subordinate to the District Magistrate. All such Magistrates are consequently bound to obey the District Magistrate in all matters connected with their work as Magistrates and to carry out all orders and instructions issued by him with respect to such work except of course where it should appear that such order or instruction is illegal or improper. I am to add that the Chief Judge has never up to this heard this questioned.

I have the honor to be,
Sir,
Your most obedient servant.

For REGISTRAR.

G.R.S. 26]

cts
File No. 26-06
Serial No 5

Diary No. of letter replied to _____

No. J1829
Cts 26-06-5

General and Rev. Secretariat
( )
, *the* 190 .

To

The Registrar,
Chief Court.

Date of issue 29-12-1906

Signed by J. Thambu Chetty Esq

Sir,

I am directed to invite your attention to para 3 of G.P. J 1302/cts 26-06-2 dated 15-11-06 and to request that the explanation of the ~~Head~~ Clerk of the Asst. Comm^r & First Class ~~Magt.~~ Magistrate's court at Shimoga ~~Division~~, to whose negligence the mistake was primarily due may be obtained and submitted to this office at an early date.

I have Etc
Wdeeraiah
For Secretary

SW 27/12/06
W 22/12/06
SUBJECT.

27/12
Rcd 28/12 & Compd 28/12

Lab 19/1
N 3847 Jud 1
1902

6
Cts 26-06

J 1769

Chief Court of Mysore,
Bangalore dated 16th January 1907.

From,

V. A. Rajaratna Mudaliar Esq.,
Registrar, Chief Court of Mysore.

To,

K. S. Chendrasekhara Iyer Esq.,
Secretary to Government,
General and Revenue Departments.

Sir,

With reference to para 3 of Government Proceedings No.J.1302 Cts.26-06-2 dated 15th November last, I am directed to forward the explanation of clerk Seshayya of Shimoga Assistant Commissioner Magistrate's Court for the omission to intimate to the Jail authorities the fact of the recovery of fine from the accused Volagada Bhima and to state that, in the opinion of the Chief Court, it is most unsatisfactory. The clerk admits that, although the report stating that the fine had been paid was received by him on 17th March 1906, he never took the trouble to read it till the 12th April 1906.

I have the honour to be,
Sir,
Your most obedient servant,

REGISTRAR.

7-12-06.
Submitted to the
Dist. Magte
Mahommed Sayed Esqr
Asst. Comr.
Phoenix Division.

To

With reference to your honour's order of the 1st Instant, forwarding copy of Government proceedings No S.J. 1302-lets. 26-06-2, dated 8th November 1906, calling upon your honour to obtain my explanation regarding the delay in intimating the fact of the recovery of the Suit Rs inflicted on one Valpida Bheema of Shikaripur in C.C. No 15 of 1905-06, I most respectfully and humbly beg to explain as follows:—

I was doing criminal work in your honour's Court in April 1906. K. N. Venkatakrishnaya, the Head Munshi of the office having closed transferred to Salem about the middle of February 06, I was ordered by the then officer, Mr. Handy, to take charge of his Revenue papers. About the beginning of March 1906, Vedavyasachar was sent as Deputy Munshi to this office. He being new to the office work, I was directed by the officer to attend to

committed by me with no motive whatever. —

I beg to remain,
Most respected Sir,
your most obedient & humble servant,
H. Deshayes

5th Dec. 1906, Shimoga.

clerk, Asst. Commrs office, Shimoga dtt.
(now Lengthh III clerk, Dy. Commrs office, Shimoga).

G.R.S. 28]

File No. 26-06
Serial No. 7

Diary No. of letter replid to 9769

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.
(Bowns)

, *the* 190

Date of issue 8th Feby 07

Signed by Mr Hambrebell

READ.—

Government Proceedings no 9 1302 / CR 26-06-2 of the 15th nov 1906 passing orders on the omission of Mr H. Chandy, Assistant Commissioner and First Class Magistrate Shimoga Division, ~~ORDER THEREON.—No.~~ to intimate to the Jail authorities in time the recovery of a fine imposed by him in a Criminal case in which the accused was sentenced to imprisonment in default of payment of the fine

over

SUBJECT

MGCPB—20,000—24-2-05

and reserving for separate consideration the question as to whether subordinate Magistrates are bound to obey the orders of a District Magistrate when not issued under the provisions of any law or rule, ~~which~~ the question having ~~had~~ been incidentally raised by the Enquiry ~~in connection with a report called for by the District Magistrate regarding the delay reported to.~~ when he was called upon by the District Magistrate to furnish an explanation for the delay referred to.

2. Letter no 3319/179 of the 17th December 1906, from the Registrar of the Chief Court of ~~in~~ Mysore

[Print in Extenso]

3 Letter no 3847/207 of the 16th January 1907, from ~~the Registrar of the Chief Court in Mysore~~ the same officer, forwarding the explanation of the Clerk Sheriff of Shimoga Asst. Commr. Magistrate's Court and stating that in the opinion of the Chief Court.

G.R.S. 27]

GENERAL AND REVENUE SECRETARIAT.

(*Continuation Sheet draft form.*)

The explanation offered was most unsatisfactory.

Order thereon no. J 2603-12 dt 28th Feb 07.

The Government concur in the opinion expressed by the Chief Court that all Magistrates subordinate to the Magistrate of the District are bound to obey him in all matters connected with their work as Magistrates and to carry out all orders and instructions issued by him with respect to such work except where it should appear that such order or instruction is illegal or improper and they accordingly direct that ~~their~~ Opinion be Communicated to all Magistrates for information and guidance.

2. The explanation of the Clerk of the Crown & Asst. Sessions Judge for the Omission to bring to the notice of the presiding officer of the Court the fact

The Registrar's letter above quoted is communicated to the Dist Magistrates ~~of the State~~ for the information of all Subordinate Magistrates in the State -

the Payment of the fine on
or if the March 1906 and
to cause intimation thereof
to be given to the gaol
authorities, is ~~grave~~ unacceptable
and the Government direct
that he be fined one months
pay -

Print

W. 27/11/07
for Secretary

To
1 The Registrar of the Chief
Court in Mysore returning the
record of the case and other
vernacular papers received
with his letter No 544/35 of the 23rd July 1906.

3182
17/11/07

2 To the Dist Magte
Shimoga Distt
3 Copy to all other
Dist Magtes

4 To the Comptroller

MS SR
26/11/07 26/11/07

Init Secy
SR
23.2
25

Secy
SR
26/11/07

1906-07

GOVERNMENT OF HIS HIGHNESS
THE MAHARAJA OF MYSORE

JUDICIAL AND LEGISLATIVE
(COURTS)

PROCEEDINGS

Dated 28th February 1907

No. J. 2603-12
Cts. 26 of 06-7

Communicating to all District Magistrates the opinion of the Judges of the Chief Court that all Magistrates in a district are subordinate to the District Magistrate and as such are bound to obey the District Magistrate in all matters connected with their Magisterial work.

GPB—12-3-07—500

Proceedings of the Government of His Highness the Maharaja of Mysore, Judicial and Legislative (Courts), dated 28th February 1907.

READ—

1. Government Proceedings No. J. 1302—Cts. 26-06-2, dated the 15th November 1906, passing orders on the omission of Mr. K. Chandy, Assistant Commissioner and 1st Class Magistrate, Shimoga Division, to intimate to the Jail authorities in time the recovery of a fine imposed by him in a criminal case in which the accused was sentenced to imprisonment in default of payment of the fine, and reserving for separate consideration the question as to whether Subordinate Magistrates are bound to obey the orders of a District Magistrate when not issued under the provisions of any law or rule, the question having been incidentally raised by Mr. Chandy when he was called upon by the District Magistrate to furnish an explanation for the delay referred to.

2. Letter No. 3319-179, dated the 17th December 1906, from the Registrar of the Chief Court of Mysore:—

"With reference to your letter No. J. 1504—Cts. 26-06-3, dated the 7th instant, requesting the opinions of the Judges on the general question referred to therein, I am directed to say that the Judges are of opinion that Section 17 (1) of the Criminal Procedure Code makes all Magistrates in a district subordinate to the District Magistrate. All such Magistrates are consequently bound to obey the District Magistrate in all matters connected with their work as Magistrates and to carry out all orders and instructions issued by him with respect to such work except, of course, where it should appear that such order or instruction is illegal or improper. I am to add that the Chief Judge has never, up to this, heard this question [illegible]."

3. Letter No. 3847-207, dated the 16th January 1907, from the same officer, forwarding the explanation of clerk Seshaiya of the Shimoga Assistant Commissioner Magistrate's Court and stating that, in the opinion of the Chief Court, the explanation offered was most unsatisfactory.

No. J. 2603-12—Cts. 26 of 06-7, DATED BANGALORE, 28TH FEBRUARY 1907.

ORDER THEREON.—The Registrar's letter above printed is communicated to the District Magistrates for the information and guidance of all Subordinate Magistrates in the State.

2. The explanation of the clerk of the Shimoga Assistant Commissioner Magistrate's Court for the omission to bring to the notice of the presiding officer of the Court, the fact of the payment of the fine on the 17th March 1906, and to cause intimation thereof to be given to the Jail authorities, is unacceptable and the Government direct that he be fined one month's pay.

K. S. CHANDRASEKHARA AIYAR,
Secy. to Govt., Gen. & Rev. Depts.

To—The Registrar of the Chief Court of Mysore, returning the records of the case and other vernacular papers received with his letter No. 544-35, dated the 23rd July 1906.

The District Magistrate, Shimoga District.

Copy to all other District Magistrates.

The Comptroller, Mysore Government.

Exd.—C. V.

with their [illegible] as to

all orders and instructions issued by him with respect to such work and adds that the Chief Judge has never up to this heard the questioned.

5 To the Registrar, Chief Court No J18290 29.12

Requests that the explanation of the clerk of the Addl Comm I st class Magistrate's Court at Shimoga to whose negligence the mistake was primarily due may be obtained & forwarded as called for in para 3 of GO. No J1302 dt 15-11-60.

6 From the same file. No 3847/202 dt 16.1.07

Forwards the explanation of the clerk Sheshayya as called for in the above and states that in the opinion of the Chief Court, the explanation offered is not unsatisfactory.

7 To the Registrar, Chief Court of Mysore.
District magistrate of Shimoga &
Other District magistrates
Comp. to Govt No J2603 dt 28.2.07

Communicates the opinion of the Chief Court expressed in 8 (4) to all the District magistrates for information & guidance of all subordinate Magistrates in the State; observes that the explanation of clerk Sheshayya is unacceptable and fines him one month's pay.